Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Application by BellSouth Corporation, BellSouth	)	
Telecommunications, Inc., and BellSouth Long	)	CC Docket No. 97-231
Distance, Inc. for Provision of In-region	)	
InterLATA Services in Louisiana	)	

REPLY COMMENTS OF AT&T CORP. IN OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION FOR LOUISIANA

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TABLE OF CONTENTS

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AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to the application of BellSouth Corp. et al. ("BellSouth") for authorization to provide interLATA services originating in Louisiana.

INTRODUCTION AND SUMMARY OF ARGUMENT

The comments overwhelmingly confirm that BellSouth's application for Louisiana replicates nearly all of the serious deficiencies of its application for South Carolina. In particular, BellSouth has not begun to comply with many of its most important checklist obligations, including its duties

i) to provide the elements of its network to competitors on reasonable and nondiscriminatory terms;

ii) to provide those elements at prices that are in fact cost-based, forward-looking, efficient and nondiscriminatory, rather than merely attaching those labels to prices that reflect -- even after some limited modifications -- an attempt to recover embedded costs;

iii) to provide nondiscriminatory access to its operations support systems;

iv) to provide all the performance measures necessary to show that it is complying with these obligations, in a form that does not disguise poor performance; and

v) to make all of its services available for resale without undue restrictions, conditions, or limitations.

Indeed, apart from a few brief and general endorsements of BellSouth's application, the only support BellSouth receives is from the Louisiana Public Service Commission ("LPSC") and from another RBOC (Ameritech). These comments are not comprehensive: Ameritech addresses only one non-dispositive aspect of a single issue, and the LPSC omits any discussion of local competition and of performance measures. The LPSC's conclusions on other issues, moreover, are thoroughly refuted by the record in its own state proceedings, the conclusions of other state commissions, the Evaluation of the Department of Justice, and the comments of potential entrants.

Accordingly, Part I of these reply comments will address some of the principal checklist items which, as the comments make plain, remain unavailable from BellSouth. In particular, Part I.A will discuss the commenters' evidence that BellSouth has failed to define how it proposes to make combinations of network elements available to CLECs so that they can recombine them, or to demonstrate that it has the capacity to provision and bill for the use of such elements.

Part I.B will then address the LPSC's claim that all of the permanent rates for unbundled network elements and interconnection are cost-based, as well as the Department of Justice's more limited claim that only three categories of costs -- for loops, collocation, and vertical features -- are not cost-based. As the comments of AT&T, MCI, and ACSI demonstrate, however, the permanent rates set by the LPSC were based, not on an independent TELRIC study performed by the staff consultant, but on BellSouth's cost studies, which were not designed in

accordance with forward-looking cost principles, and which the staff consultant admittedly lacked the time and resources fully to correct. Recognizing this, the ALJ issued a detailed recommendation rejecting use of the staff consultant's proposal as a basis for setting permanent prices and ordering further proceedings. Because the LPSC's comments, like its decision, contain no explanation whatsoever for rejecting the ALJ's recommendation, those comments are entitled to little, if any, weight. Accordingly, after conducting the independent inquiry required under section 271, the Commission should conclude that BellSouth has not demonstrated that its prices are cost-based.

Part I.C will then address the overwhelming evidence that BellSouth has failed to provide nondiscriminatory access to its OSS, while Part I.D will discuss its failure to provide essential measures to judge its performance. Finally, Part I.E shows that the Commission should apply here the principles it articulated in the Local Competition Order[1] and reject the resale restrictions BellSouth has imposed on CLECs.

Because each of these reasons is a sufficient ground on which to reject BellSouth's application, the Commission need not address whether BellSouth is eligible to proceed under Track A because of the presence of PCS providers in Louisiana. Part II nevertheless shows that Ameritech's claim that PCS providers offer "telephone exchange service" under section 271 is not dispositive because the record confirms that PCS providers are not "competing providers" under section 271.

Finally, Part III responds briefly to the LPSC's claims that BellSouth's entry would serve the public interest.

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[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) ("Local Competition Order").

I. THE COMMENTS CONFIRM THAT BELLSOUTH HAS FAILED TO COMPLY WITH ITS CHECKLIST OBLIGATIONS

The comments in this proceeding, as well as the Evaluation of the Department of Justice, add to the litany of evidence -- including the record in BellSouth's South Carolina application and the conclusions of other state commissions in BellSouth's region -- that BellSouth's failure to comply with its checklist obligations is pervasive and profound. That evidence shows that BellSouth remains "well short" of opening its monopoly market, DOJ Eval. at 3, and that BellSouth -- in lieu of filing further applications with this Commission -- should now devote substantial additional efforts to complying with the Act.

A. BellSouth Has Not Made Available And Is Not Providing Combinations Of The Loop And Switching Elements

The Commission's prior rulings confirm that to open its markets and comply with the checklist, the petitioning BOC must satisfy the Act's requirements for all three means of local entry: resale, unbundled network elements, and interconnection of networks. Ameritech Michigan Order ¶¶ 13, 21.[2] The LPSC claims that BellSouth has met this obligation, including its obligation to offer unbundled elements "in a manner" that allows for them to be combined. LPSC Comments at 11-12. The comments demonstrate, however, that BellSouth has resisted, rather than implemented, this obligation.

BellSouth's application is deficient with respect to combinations of network elements in three distinct and important ways. First, BellSouth has not "clearly articulate[d] the manner in which it proposes to offer UNEs so that they may be combined." DOJ Eval. at 10. Second,

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[2] In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) ("Ameritech Michigan Order").

the only aspect of its proposal that BellSouth has made "clear" is that it "believes it may require CLECs to lease collocation space and deploy their own equipment for the purpose of combining" UNEs, a condition that is not "reasonable and non-discriminatory." Id. at 14. Finally, the comments show that, as in South Carolina, BellSouth does not possess "the practical ability to process orders and provision unbundled elements that are to be combined by CLECs." Id. at 11. For each of these reasons, BellSouth's application must be rejected.

1. The LPSC found that BellSouth was complying with its obligations to provide UNEs for combination so long as its SGAT contained general language stating that CLECs may "gain access to all [] unbundled elements" so that they may "combine th[ose] unbundled elements themselves." LPSC Comments at 11. The comments demonstrate, however, that, as in South Carolina, this "SGAT provision on combining UNEs [is] legally insufficient" because BellSouth "has yet to develop specific proposals" as to the terms and conditions upon which it will provide access to UNEs, the functionalities it will provide to enable CLECs to combine UNEs, and the technical specifications that CLECs will have to order and combine UNEs. DOJ Eval. at 12-13 & n.23.[3] As the Department of Justice recognizes, BellSouth claims only that it is "open to negotiat[e]" terms for UNE combinations, which is plainly "insufficient" and fails to "commit BellSouth to any procedure -- let alone one that would be sufficient to satisfy section 251(c)(3)

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[3] See also MCI Comments at 39 (BellSouth "refuses to provide any detail regarding services it will perform to facilitate combinations"); WorldCom Comments at 18, 23-24 (BellSouth "has not demonstrated how it will exercise its new 'right to disconnect'"); Sprint Comments at 46-47 ("Without more detail, of course, it is impossible for CLECs to determine whether UNE recombinations will be even theoretically feasible in BellSouth's region"); LCI Comments at 12 ("BellSouth has not identified in any detail how it intends to permit CLECs to order and then combine all of the individual UNEs"); ALTS Comments at 21-22; Telecommunications Resellers Ass'n ("TRA") Comments at 31-33 ("BellSouth provides no details as to which elements may be combined where and how such elements may be combined and at what cost"); CompTel Comments at 5-9 (BellSouth's "bare bones description" of its UNE combination policy "raises many more questions than it answers").

and the checklist standard." DOJ Eval. at 14. Because BellSouth's application contains nothing more than an "undeveloped plan" (id.) on an issue that is "very important to promoting efficient competitive entry" (id. at 16), it falls well short of complying with its statutory responsibility to provide UNEs "in a manner" (§ 251(c)(3)) that they may be combined.

2. Although BellSouth's failure to articulate a concrete proposal to allow CLECs to combine UNEs is sufficient grounds to deny BellSouth's application, see Ameritech Michigan Order ¶ 110 (requiring, at a minimum, the BOC to agree to a "concrete and specific legal obligation" before concluding that it is providing a checklist item), the Commission should act now and hold that BellSouth's imposition of a collocation requirement on CLECs is unreasonable and discriminatory under section 251. As AT&T and other commenters showed, that requirement is inherently discriminatory and anticompetitive for a multitude of reasons.[4] First, the "physical disconnection" that results because of BellSouth's collocation requirement "virtually guarantees that customers opting for competitive services will suffer service outages of indefinite duration." WorldCom Comments at 22; see also AT&T Comments at 15 & Falcone/Lesher Aff. ¶¶ 39-50. BellSouth's collocation requirement will also place artificial limits upon CLEC market entry because collocation in every central office will be required for broad entry and

[4] AT&T Comments at 14-23 & Falcone/Lesher Aff.; MCI Comments at 40 (the purpose of BellSouth's collocation requirement "can only be to drive up CLEC costs, degrade CLEC quality and reliability, and delay the development of competition"); WorldCom Comments at 24-29 ("BellSouth's collocation procedure would impose excessive costs and place discriminatory burdens on the CLECs") & Porter Aff.; TRA Comments at 33 (collocation requirement is discriminatory because "BellSouth does not limit its own personnel to collocation cages"); KMC Comments at 5-10 ("The only reason for such collocation is for BellSouth to impose unnecessary costs on the CLECs, in violation of section 251(c)(3)") & Walker Aff.; see also DOJ Eval. at 14-15 (noting that CLECs have provided "substantial evidence" that "a collocation requirement would dramatically and unnecessarily increase the obstacles to combining elements, would decrease the quality of the service that new entrants are able to provide compared to the incumbent (increasing the risk of service outages), and would severely limit the number of customers that new entrants would be able to serve for the foreseeable future").

because of the time needed to perform the manual work to establish cross connections. AT&T Comments at 17-18 & Falcone/Lesher Aff. ¶¶ 51-72; see also KMC Comments at 9 (BellSouth's requirement will necessitate "a vast increase in the number of collocation sites"); WorldCom Porter Aff. ¶ 11. A collocation requirement will also prevent CLECs from offering service quality comparable to that of BellSouth and other ILECs, AT&T Comments at 18-19, yet will also impose on CLECs significant and discriminatory costs. Id. at 19; see also WorldCom Comments at 28-29; KMC Comments at 10. Finally, BellSouth apparently insists upon its collocation requirement to the exclusion of other more efficient (though still discriminatory) alternatives that CLECs could use to combine elements. See AT&T Comments at 20 & Falcone/Lesher Aff. ¶¶ 97-122; WorldCom Porter Aff. ¶¶ 4-8 (electronic combination); CompTel Comments at 10-12 (supervised access and automated systems).[5]

3. Finally, the LPSC never addressed, and BellSouth has failed to demonstrate that it has "the practical ability to provide unbundled elements in a manner that permits them to be combined." DOJ Eval. at 15. In this regard, the Department notes that BellSouth's "current network[] w[as] not designed to provide unbundled elements to others, and it should not be assumed that [it] necessarily posses[es] the capabilities to do so." Id. To the contrary, the records in this proceeding and in South Carolina demonstrate that BellSouth is unable today to provide nondiscriminatory access either to individual or to combined network elements.

LCI's comments, for example, chronicle its efforts "to begin testing the systems and procedures that BellSouth had in place to provide access to combined UNEs." LCI Comments

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[5] Thus, it cannot be disputed that "the present record" (cf. DOJ Eval. at 15), which includes the conclusions of numerous new entrants, and particularly the detailed testimony of two AT&T witnesses, see AT&T Falcone/Lesher Aff., is more than enough to demonstrate that BellSouth's collocation requirement (as well as similar efforts that other ILECs are now attempting to impose) is unreasonable and discriminatory under the Act.

at 11. LCI's testing proposal was intended to "test and verify" BellSouth's "procedures for ordering and provisioning a combination of UNEs consisting of local loops and local switching and shared transport," as well as the "exchange of billing records to determine if BellSouth could provide all of the detail" required by LCI. Id. BellSouth, however, rejected LCI's proposal on the grounds that "it was not required to provide combined UNEs to CLECs." Id. at 12. Neither at that time nor, apparently, in the intervening months has BellSouth "identif[ied] the procedures that should be followed by CLECs to accomplish that combination." Id.

Because of BellSouth's refusal to test UNE combinations with LCI and with other carriers, BellSouth has presented no evidence of "actual provisioning or satisfactory . . . testing" of UNEs that may be combined, DOJ Eval. at 16, which is yet another ground on which to deny its application. Ameritech Michigan Order ¶ 110.

Moreover, the Commission should be especially dubious, in the absence of actual provisioning, of BellSouth's ability to provide UNEs for combinations because the record here, as in South Carolina, shows that BellSouth is unable to provide reasonable and nondiscriminatory access to individual UNEs -- particularly loops and unbundled switching.

Thus, since its comments in the South Carolina docket, ACSI reports (Comments at 21) "no significant improvement in BellSouth's performance" in provisioning loops and other checklist items. ACSI's comments also set forth in detail serious and repeated BellSouth errors -- including delayed installations, service outages during cutovers "routinely exceeding 4 hours," and service quality problems (volume losses, false busy signals, and even crossed lines) as well as post-cutover disconnections -- which have led to the loss of customers and the filing of "two formal complaints," one with this Commission and one with the Georgia PSC. ACSI Comments at 23-32.

Sprint similarly reports that it "has experienced problems in virtually all phases of the customer activation (or "cutover") process for unbundled loops," as well as provisioning and billing problems after cutover, leading Sprint to file a formal complaint with the Florida PSC. Sprint Comments at 31-33; Closz Aff. ¶¶ 59-78. And Intermedia comments that it "still has not been able to obtain unbundled digital loops" and related components it needs to provide competitive data services. Intermedia Comments at 6-7.

In addition, as AT&T set forth in its initial comments, BellSouth's performance to date demonstrates its inability and unwillingness to provide CLECs with all of the features, functions, and capabilities of the local switching element. AT&T Comments at 23-31; see also DOJ Eval. at 11 n.17 (noting that "there are serious questions about whether or not BellSouth is 'providing'" unbundled switching). Most notably, BellSouth is unwilling and unable to provide CLECs with the information necessary to bill IXCs for exchange access services. AT&T Comments at 23-28. BellSouth also refuses to provide AT&T with the ability to order features (e.g. call blocking) individually or in packages other than as BellSouth currently offers them, and has yet to implement customized routing to AT&T's operator services and directory assistance centers -- a failing that BellSouth now unlawfully exploits by placing its own brand on the OS/DA services that it resells to AT&T. Id. at 28-31. For each of these reasons as well, BellSouth has failed to demonstrate the willingness or capability fully to provision unbundled network elements.

B. BellSouth Is Not Offering Unbundled Network Elements At Cost-Based Rates

BellSouth's failure to provide nondiscriminatory access to unbundled network elements alone requires rejection of BellSouth's application. But in ruling on this application, the Commission should also address BellSouth's failure to make its network elements available at cost-based prices.

The Department of Justice identifies three categories of BellSouth prices that are not cost-based -- loops, collocation, and vertical features. DOJ Eval. at 23-28. As discussed further below, the comments of DOJ and others on these points are persuasive, and the contrary assertions of the LPSC are unfounded. At the outset, however, it is crucial to note that most of the remaining UNE prices not discussed by the Department are equally flawed -- and in many of the same ways as the prices the Department does address.

1. The Staff Consultant Did Not Conduct An Independent, Forward-Looking Cost Study

The Department states that BellSouth's "pricing for unbundled elements is in most respects" cost-based because the prices "were developed from a study by the LPSC's staff consultant according to the TSLRIC/LRIC ratemaking requirements . . . ." DOJ Eval. at 22; see also LPSC Comments at 26. This assessment overstates the staff consultant's accomplishments. The staff consultant had neither the time nor the resources to conduct a true forward-looking cost study, and no such study was ever done by her or by the LPSC. To the contrary, the LPSC staff consultant used prices premised upon BellSouth's cost studies as a "default," making only partial adjustments. See AT&T Comments at 35-36 (citing LPSC Transcript, Open Session, Oct. 22, 1997, at 87 (BellSouth App. D, Tab 2) ("10/22 Open Session Tr."). BellSouth's cost studies, in turn, reflected BellSouth's erroneous view that forward-looking cost principles permit the recovery of BellSouth's "actual, or embedded, costs." Final

Recommendation, Docket No. U-22022/22093 at 18 (Oct. 17, 1997) (BellSouth App. C Tab 284) ("ALJ Rec."); see also AT&T Comments at 32-34. Although the consultant corrected some of the more egregious aspects of BellSouth's proposal (e.g., its attempt to impose a residual recovery requirement (see ALJ Rec. at 18)), she was unable to address all of the problems in BellSouth's studies. See Dismukes Testimony, Hearing Tr. at 2925; 2930-31 (Sept. 24, 1997) (BellSouth, App. C, Tab 273) ("Dismukes Test. Tr.").

For example, the consultant was unable to correct the numerous improper network-design assumptions that permeated BellSouth's cost studies. As the ALJ found, BellSouth's studies reflected its erroneous view that forward-looking cost studies may be based upon "the technology available at the time BellSouth placed individual facilities or equipment into service" rather than on "the most efficient, least-cost technology currently available" as of the time of the cost studies. ALJ Rec. at 23-24 & n.35. The staff consultant was simply unable, given the limited time available to her and the "closed" nature of BellSouth's cost studies, to correct the studies for this pervasive problem. See AT&T Comments at 35-36; MCI Comments at 53-55; Follensbee Aff. ¶ 9.

Thus, while it is true, as the Department of Justice observes, that the LPSC and the consultant retained by its staff endorsed a cost-based "methodology" (DOJ Eval. at 23), the core problem is that neither the staff consultant nor the LPSC consistently applied this methodology in setting the rates.[6] Although the consultant made some useful corrections, the "permanent"

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[6] Indeed, even BellSouth itself purported to endorse the forward-looking cost methodology recommended by the ALJ and purportedly adopted by LPSC. See ALJ Rec. at 16 (noting that the LPSC's "definitions of LRIC and TSLRIC costing methodologies [including the "nine principles of the Michigan Order"] are not opposed or contradicted by any party to this proceeding, including BellSouth"). What the parties did dispute -- and what is ignored by the LPSC's order and, in some respects, by the Department's evaluation -- is the parties' dispute over how to apply that methodology. See id. at 10-11.

prices approved by the LPSC are based on BellSouth's cost studies, which concededly were prepared with an embedded-cost focus that neither the staff consultant nor the LPSC ever fully corrected. AT&T Comments at 35-38. The resulting prices are thus "cost-based" in name only. Cf. DOJ SC Eval. (Docket 97-208) at 37-38 ("Of course, the label attached to a particular methodology is not determinative; it is the substance that counts").

All of this is set forth in the carefully reasoned, 65-page recommended decision of the ALJ, which largely rejected the staff consultant's prices subsequently adopted by the LPSC. Notably, neither in its order nor in its comments has the LPSC ever addressed the merits of the ALJ's decision. Indeed, in its comments the LPSC simply observes that "the LPSC voted to reject the Final Recommendation of the Administrative Law Judge" (LPSC Comments at 27), without offering any explanation why it did so. The LPSC's failure to explain its rejection of the ALJ's detailed analysis and recommendation seriously undercuts any deference its findings might otherwise claim. Cf. DOJ Eval. at 22 ("[I]f a state commission has not explained its critical decisions . . . the Department will require further evidence that prices are consistent with its open-market standard.").[7]

2. The LPSC's Comments Do Not Demonstrate That The Permanent UNE Prices Are Cost-Based.

The LPSC's comments are unpersuasive not simply because they fail to address the ALJ's recommendation, but because they do not otherwise explain why the permanent rates may properly be found to be cost-based. The comments of other parties, moreover, demonstrate that the rates in fact are not cost-based.

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[7] Indeed, the Department of Justice applied this same principle when it refused to defer to the LPSC's findings on OSS, in part because of the LPSC's "[un]articulate[d]" reasons for ignoring "the recommended decision of the Chief [ALJ] that did discuss OSS issues at length and found significant deficiencies." DOJ Eval. at 18 & n.30.

a. The LPSC first asserts that its pricing decision is entitled to deference because the LPSC relied upon an "extensive proceeding" to set permanent prices.[8] Here, however, the "detailed and extensive record" that must be present before this Commission will defer to a state commission's findings, Ameritech Michigan Order ¶ 30, was compiled by the ALJ but was ignored by the LPSC. Moreover, not only did the Commission reject -- without explanation -- the recommended decision that was the product of those proceedings, but the proceedings themselves did not allow the participants sufficient time to complete the task at hand. See DOJ Eval. at 26 (consultant "did not have time" to analyze collocation prices); id. at 28 (consultant had only a "limited opportunity" to analyze vertical feature prices); ALJ Rec. at 52, 54.

For example, because the LPSC mandated that the docket be complete by its October session,[9] the LPSC's staff consultant "was given only one week to review the [parties'] materials and [to] recommend rates." MCI Comments at 53. She repeatedly testified that she was not provided with adequate time even to evaluate, let alone to correct BellSouth's cost studies. See id. at 53-55. As a result, in most instances, she "accepted BellSouth's assumptions

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[8] LPSC Comments at 23. As with South Carolina's PSC, here the LPSC does not contend, as does BellSouth, that its pricing decisions are determinative and must be uncritically accepted as a matter of law by this Commission in a section 271 proceeding. Accordingly, only BellSouth espouses the radical position that this Commission has no authority even in 271 proceedings to find independently that BellSouth complies with the pricing checklist item. For reasons previously articulated by AT&T and others, e.g., AT&T Comments at 40-41, MCI Comments at 64, the Commission should reject BellSouth's position and re-affirm its authority in 271 proceedings.

[9] The LPSC's refusal to permit additional time for review of BellSouth's cost studies was apparently driven by BellSouth's insistence that a cost docket that was closed (i.e., with permanent prices) would be "much more valuable" and "neater and a lot cleaner" when BellSouth came to this Commission for 271 approval. See 10/22 Open Session Tr. at 88-89. BellSouth's success in this approach illustrates why the Commission must look beyond labels to determine whether prices are in fact cost-based.

without review and used BellSouth's 'numbers' as defaults in her calculation of rates." Id. at 54.

b. The comments also demonstrate that, with respect to the only three cost categories specifically mentioned by the LPSC -- loops, ports, and nonrecurring charges -- the prices adopted by the LPSC are not cost-based. To begin with, while the LPSC is correct that the prices for these elements are lower than those proposed by BellSouth, the decrease reflects only the elimination of a patently unlawful "residual recovery charge" and certain adjustments to generic inputs. See Follensbee Aff. ¶ 32. Such changes cannot transform prices premised on network-design assumptions that reflect outdated, inefficient, and embedded technology into forward-looking prices -- those prices remain the fruit of the poisonous tree.[10] Finally, as the Department of Justice states, Eval. at 26-27, BellSouth's collocation rates (not even mentioned by the LPSC) are plainly not cost-based.

i. First, the LPSC asserts that loop rates are cost-based because the staff consultant reduced BellSouth's proposed recurring price for unbundled 2-wire voice grade loop of $27.15 to $19.35. The lower price for loops -- which reflects removal only of the obviously

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[10] As just one example, in determining its price for loops, BellSouth's cost studies relied on its actual 1995 fill factors (a measurement of a network facility's used capacity that, when properly set, allows the ILEC to recover the forward-looking, efficient, and nondiscriminatory cost of spare capacity). See Pre-Filed Testimony of Kimberly H. Dismukes, at 25-26 (Sept 22, 1997) (BellSouth, App. C, Tab 273/1) ("Pre-Filed Dismukes Test."); ALJ Rec. at 46. BellSouth's historic decisions about spare capacity -- for example, BellSouth's fill factor for copper distribution cable was a mere 37.9 percent-- plainly will not apply in a competitive environment, where companies will seek to lower prices by using efficient amounts of cable -- and no more. Moreover, to the extent BellSouth historically allowed for excess capacity to meet future demand, it is discriminatory to allow current customers to pay the costs of serving those future customers, and adjustments in fill factors are required to eliminate that bias. The staff consultant merely took BellSouth's historic fill factor for copper distribution cable and added five percent in computing BellSouth's loop prices, id. at 48, an approach that does nothing to ensure that CLECs are not being charged for excessive and inflated capacity levels.

improper residual charge and the changes to generic inputs noted above -- is not cost-based, because it reflects the extensive historical, embedded, and obsolete technologies that formed the basis of BellSouth's cost studies and that necessarily inflated the rates now permanently in effect. See Follensbee Aff. ¶ 34. The staff consultant conceded, for example, that, contrary to the Commission's TELRIC standard, she "relied on BellSouth's study which is not a scorched node study." Dismukes Test. Tr. at 3023. Rather, the BellSouth loop study "assumes that the existing cable that is in the ground or in the air will still be . . . [there] in the future." Id. Further, as MCI points out, BellSouth's modified rates for unbundled loops assume the use of an outmoded technology, the universal digital loop carrier (UDLC), even though "BellSouth will be deploying in Louisiana for its own customers" an integrated digital loop carrier (IDLC). MCI Comments at 56-57. Loops using the IDLC are "much less costly" because, unlike the UDLC, it is not necessary to use either analog conversion equipment or a main distribution frame. Id. at 56-57 & n.41. Indeed, BellSouth's approved loop rates are so inflated that, even after the staff consultant's reductions, they still exceed the amount that BellSouth voluntarily negotiated with ACSI. Dismukes Test. Tr. at 3080, and are barely a dollar less than the rates BellSouth initially proposed in the cost docket. Pre-Filed Testimony of Kimberly H. Dismukes, at 4 (Sept 22, 1997) (BellSouth, App. C, Tab 273/1) ("Pre-Filed Dismukes Test.").

Quite apart from these embedded-cost assumptions, BellSouth's loop rates are not cost-based because they are not geographically deaveraged. See DOJ Eval. at 23-25; AT&T Comments at 37; MCI Comments at 55-56; Sprint Comments at 40-41. While the LPSC simply overlooks the problem, DOJ asserts that section 271 authority may be granted "before" such deaveraging takes place, so long as it is "clear that it will be accomplished over some transition period" that involves universal service reform. DOJ Eval. at 25-26. The Department offers no

basis in the Act to support its assertion, however, and the Commission should reject it. See Ameritech Michigan Order ¶ 292.

Because loop costs vary tremendously between urban and rural areas, rates that are not geographically deaveraged are inherently not cost-based. The Act explicitly precludes the Commission from either adding or subtracting items from the checklist (see § 271(d)(4)), and to say that a transition period is needed to establish cost-based rates is simply to admit that, until that transition is complete, rates are not cost-based. The Commission has no more authority to grant a section 271 application in the absence of full compliance with the requirement of cost-based rates than in the absence of full compliance with any other checklist item. And, as a policy matter, there is no reason to encourage further transitional delay. As the Department itself notes, "many" states have already established geographically deaveraged rates, and there is no reason for others to "wait" to do so. DOJ Eval. at 25 n.48. In summary, because BellSouth's permanent rates for unbundled loops are not deaveraged, are based upon embedded technology, and contain other flaws,[11] those rates -- even after the reductions adopted by the LPSC -- are not cost-based.

ii. The LPSC next points (at 26-27) to the reduction in BellSouth's recurring port charge from $2.60 to $2.20 and the reduction in the additional recurring charge from $11.97 for all but three vertical features to $8.28 for all vertical features, resulting in a total recurring port cost of $10.48. The LPSC provides no explanation, however, as to how such an outlandishly high charge -- as much as eight times higher than the port rates approved by other

[11] For example, the sample of loops in BellSouth's study omitted entirely many types of business trunks -- a total of nearly 13 percent of BellSouth's lines in Louisiana -- that would have resulted in lower prices because these loops are on average shorter and located in more densely populated areas. Follensbee Aff. ¶ 33. This improper methodology was never addressed by the LPSC staff consultant or by the LPSC.

state commissions (see DOJ Eval. at 28-29 n.57) -- could possibly be cost-based, and indeed there is no basis. Instead, the LPSC purports to rely solely "on the rationale of LPSC consultant Kimberly Dismukes, as set forth" in her prefiled testimony and at the hearing. LPSC Comments at 27.

That testimony cannot support imposition of these rates, however, because the staff consultant herself testified that she had not had sufficient time to develop reliable cost-based prices. Cf. DOJ Eval. at 27-28. In particular, she testified that BellSouth's cost study was "poorly documented," "offered little explanation of how the costs of vertical features were developed," and contained "inherent flaws." Pre-filed Dismukes Test. at 44. Nevertheless, because the study was not even submitted until a few weeks before her testimony (see Follensbee Aff. ¶¶ 4, 41-42; DOJ Eval. at 27-28), she felt compelled to accept BellSouth's proposal with only a minor adjustment,[12] testifying that if she had more time she would seek "additional discovery" and analyze the study "more thoroughly," which could lead to "a radically different number." Dismukes Test. Tr. at 3111-13. In short, the consultant's testimony supports not the LPSC's order but the unaddressed and unrefuted conclusion of the ALJ "that further proceedings be undertaken" to set permanent prices for vertical features. ALJ Rec. at 52.

Furthermore, as was the case with loops, the staff consultant's modification to the port charge of $2.60 to $2.20 only partly addressed the defects in BellSouth's cost studies. As

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[12] She reduced BellSouth's proposed vertical features charge by 16 percent because that proposal -- based largely on historical data -- assumed that demand for vertical features would grow no faster than demand for access lines (i.e., around 5 percent), even though BellSouth's own public forecasts indicated that growth for such vertical features would be at least 30 percent. Pre-filed Dismukes Test. at 44-45. She simply lacked time fully to address more fundamental concerns (see id. at 44), such as the absurdity of any material charge for functionality that is inherent in the switch and already included in its price. See AT&T Comments at 36; MCI Comments at 63.

AT&T demonstrated, an independent review of BellSouth's switch contracts demonstrates that its switches are in fact available for much less than BellSouth claims, and that "least-cost" switch purchasing (required under efficient, forward-looking costing principles) would reduce BellSouth's price significantly. See Follensbee Aff. ¶ 35. Here, too, the consultant lacked time to review these contracts, id., and thus her modest reduction could not and does not include the necessary changes to BellSouth's rates.

iii. Third, the LPSC points to the consultant's reductions to BellSouth's proposed non-recurring charges. LPSC Comments at 26-27. ACSI's simple demonstration (Comments at 17) that BellSouth's non-recurring charges to CLECs for installing a basic unbundled loop would run over $170 -- *double* what BellSouth charges its end users -- is compelling evidence that these rates are not cost-based. But AT&T also has pointed to numerous problems with BellSouth's non-recurring cost studies, including the presence of numerous historical and inefficiently incurred costs. See Follensbee Aff. ¶¶ 54-58. To take just one example, BellSouth bases its non-recurring prices on the assumption that 20 percent of CLEC orders will require costly manual processing, rather than the 1 to 2 percent that ILECs should achieve (and, indeed, claim already to have achieved). The ALJ recommended a phase-in to a 1 percent rate (ALJ Rec. at 62); lacking time, once again, to do a complete analysis (Pre-filed Dismukes Test. at 42; Dismukes Test. Tr. at 3110-11), the staff consultant did little more than make minor reductions to the labor rates associated with these unnecessary manual activities, id. at 2887, and thus the LPSC staff -- and ultimately the LPSC -- simply adopted BellSouth's patently unreasonable proposal of 20 percent fallout. See Follensbee Aff. ¶¶ 53-58. Indeed, virtually the only adjustment from BellSouth's proposals were minor reductions to labor rates associated with the unnecessary manual activities. Forcing CLECs not only to accept

discriminatory levels of manual processing, but to reimburse incumbents for the costs of such inefficiency through inflated permanent rates, flatly conflicts with any conceivably fair application of forward-looking cost principles.

iv. The LPSC said nothing whatsoever in its comments about BellSouth's collocation prices. But as the DOJ and other commenters point out, those costs obviously are not cost-based. Reliance upon the staff cost-consultant's work is inadequate here because, once again, she "did not have time to analyze" the CLECs' proposed cost model (and did not even examine the alternative AT&T/MCI model (Dismukes Test. Tr. at 3119)), but instead adopted the BellSouth proposal with only "limited modifications." DOJ Eval. at 26-27. Not only are there are no prices whatsoever for certain important cost elements, such as space preparation (id. at 26), but BellSouth does not even pretend that its cost model was based on forward-looking principles, because BellSouth's claimed those principles were inapplicable to collocation. ALJ Rec. at 53. There is thus no basis in the record to support a finding that collocation rates are cost-based. See DOJ Eval. at 27; AT&T Comments at 37-38 & Follensbee Aff. ¶¶ 48-52; MCI Comments at 61-63 (discussing numerous infirmities with BellSouth's collocation cost studies and pricing).

In summary, while the LPSC conducted a proceeding in which a forward-looking methodology was nominally adopted, neither it nor the staff's consultant were able to apply that methodology consistently in a manner that reflected proper forward-looking cost assumptions. This problem is not unique to two or three cost categories, as the Department's comments suggest, but is pervasive, as documented by the ALJ in findings that were not addressed by the LPSC. The Commission should therefore reject these prices as non-compliant.

C. BellSouth Has Not Made Available And Is Not Providing Nondiscriminatory Access To Operations Support Systems

Virtually all the comments filed conclude that the flaws in BellSouth's Operations Support Systems are equally as pervasive here as in South Carolina, and that BellSouth remains well short of demonstrating that its systems provide the same functionality as BellSouth's own systems and are operationally ready for CLECs to use.[13] As the Department of Justice states, "in the short period of time since [BellSouth's] initial filing [in South Carolina], it has failed to make the changes necessary to provide [non-discriminatory] access." DOJ Eval. at 20. And, BellSouth continues to contest the Commission's standards for OSS, and to concede that its systems do not currently meet those standards. Br. 24. On this basis, the Commission should deny BellSouth's application.

Only the LPSC concludes that BellSouth has met this checklist obligation. Yet even the LPSC states only that BellSouth's OSS are "fully functional;" the LPSC does not find that the systems meet this Commission's rules. See LPSC Comments at 28. Indeed, as AT&T, DOJ, and other commenters show, the LPSC's conclusion regarding OSS should not be given any deference because its findings are largely unexplained, and in fact may have been pre-

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[13] MCI Comments at 11-37 ("BellSouth comes nowhere close to meeting its burden of showing that it fully implements, provides or even effectively offers non-discriminatory OSS"); WorldCom Comments at 11-17 (BellSouth "has not demonstrated that its provision of OSS to competitive carriers is consistent with its checklist obligation"); Sprint Comments at 26-33 (BellSouth's "OSS for Louisiana continues to be inconsistent" with DOJ's standards); LCI Comments at 1-7 ("LCI's experiences to date" with two BellSouth OSS interfaces "demonstrate that CLECs do not have parity of access to BellSouth's OSS"); ACSI Comments at 35-37 ("BellSouth has yet to provide . . . an interface" to ACSI that is "proven" and "capable of handling large volumes of ULL orders in a nondiscriminatory manner"); see also ALTS Comments at 18-20; Intermedia at 3-6; TRA Comments at 25-29; KMC Comments at 10-13; Hyperion Comments at 5-9.

ordained.[14] The LPSC's conclusion that BellSouth's OSS "do in fact work" (LPSC Comments at 28) is not an adequate substitute for a reasoned and detailed assessment of whether BellSouth is providing nondiscriminatory access to its OSS. The LPSC's superficial conclusion does not refute all the other comments in this record, the recommendations of its own ALJ and Staff, and the findings of at least three other state PSC's in BellSouth's region -- all of which determined that BellSouth's OSS are inadequate.

In its Comments (at 28), the LPSC claims to have given "careful consideration and analysis" to whether BellSouth provides access to its OSS to CLECs at parity. But -- as with its conclusions on pricing of UNEs -- that label is belied by the substance of the record. First, as noted above, the LPSC's Comments do not begin to address the range of significant issues that are encompassed within the Commission's broad two-part inquiry as set forth in the Ameritech Michigan Order.[15] Instead the LPSC -- like BellSouth -- seems content to treat that Order as if it did not exist.

Second, nowhere did the LPSC "articulate the analysis it performed in assessing OSS compliance, . . . the basis for its conclusion on OSS, or its reasons for rejecting the recommended decision" of its ALJ. DOJ Eval. at 18. The absence of these critical features from the LPSC's decision-making process alone allows the Commission to disregard the LPSC's conclusions. See Ameritech Michigan Order ¶ 30. Indeed, to the extent the Commission should

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[14] AT&T Comments at 56-58 & Norris Aff.; DOJ Eval. at 18-19 & nn.29-30; MCI Comments at 11; WorldCom Comments at 15-17.

[15] DOJ Eval. at 18. As DOJ notes, Eval. at 18 n.29, the LPSC held an open session the day after the Commission released that Order, and at that time rejected a motion by one of its members to permit additional time to analyze the implications of the Order on BellSouth's OSS. And, even though over three months have passed since that time, the LPSC failed even to mention that Order in its Comments, let alone to explain whether that Order affected its assessment of BellSouth's OSS compliance in any way.

defer to a "detailed and extensive record" (id.) in Louisiana on BellSouth's OSS, that deference is warranted only for the Chief ALJ's recommendation, which was based on her direct examination during seven days of testimony from numerous witnesses and which found numerous defects with BellSouth's OSS. See ALJ Recommendation; see also AT&T Comments at 56 & Norris Aff. ¶¶ 5-11; DOJ Eval. at 18; MCI Comments at 11; WorldCom Comments at 15-16.

Finally, the LPSC's approval of BellSouth's OSS was based largely on a short technical demonstration, rather than a "more thorough assessment of performance parity and operational readiness through internal testing evidence, carrier-to-carrier testing, and performance indicators reflective of actual use." DOJ Eval. at 19. As the Department recognizes, such technical demonstrations alone cannot demonstrate that an ILEC's OSS meets the Commission's rules.[16] Moreover, this particular conference was attended by only three of the five Commissioners and provided only limited opportunities for parties to refute BellSouth's demonstration. See AT&T Comments at 57 & Norris Aff. ¶¶ 12-18. These defects seriously undercut the LPSC's claim that it gave "careful consideration and analysis" to BellSouth's OSS.

Even if the LPSC had attempted to explain in detail its decision finding BellSouth's OSS adequate, its determination would be easily outweighed by the ever-growing accumulation of

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[16] BellSouth, through ex parte proceedings, apparently has been conducting similar demonstrations for the Commission. See Letter of Robert T. Blau (BellSouth) to Magalie Roman Salas (FCC), at 1 (Dec. 8, 1997) (describing a "series of meetings" that purport to "demonstrate the workings of BellSouth's [OSS]"). As DOJ's Evaluation shows, such demonstrations are insufficient to demonstrate checklist compliance. Moreover, BellSouth chose to present this demonstration ex parte, well after its initial application was filed and after it had made changes to its systems. Such presentations prevent other parties from rebutting any claims made by BellSouth. BellSouth's use of procedures that preclude a public demonstration of its systems -- with opportunity for parties to show the many infirmities of its OSS -- means that the Commission should give no weight to those demonstrations. See Letter of Roy E. Hoffinger (AT&T) to Magalie R. Salas (FCC), at 5 (Dec. 8, 1997).

evidence that those systems function in a discriminatory manner and are not operationally ready. This evidence includes the record here[17] and in South Carolina, as well as the recent decisions of other state commissions,[18] and the Evaluations of the Department of Justice. This evidence leaves no doubt that BellSouth has not yet even deployed all of the interfaces needed to provide nondiscriminatory access to OSS, let alone demonstrated that it is providing such access today.

Thus, the Department of Justice "re-affirm[ed]" its finding in South Carolina that "there are significant problems with BellSouth's system." See DOJ Eval. at 19; DOJ SC Eval. at A-7. These problems are inherent in the systems BellSouth has chosen to deploy, and the Justice Department found that they do not "provide CLECs with access to the basic functionalities at parity with its own systems." DOJ Eval. at 20 (emphasis omitted).

For example, DOJ concluded in South Carolina and re-affirmed here that BellSouth's LENS system, upon which CLECs must rely for pre-ordering, is "inadequate" and "precludes full and fair competition" because, inter alia, it requires "double-entry" of customer information by the CLEC, limits the amount of telephone numbers CLECs can reserve, and does not provide

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[17] See e.g., AT&T Comments at 41-50 & Bradbury Aff.; MCI Comments at 11-37 & King Supp. Decl.; Sprint Comments at 26-33; WorldCom Comments at 11-17; LCI Comments at 1-7, Baffer Decl., Witbrodt Decl. & Rausch Decl.; ASCI Comments at 41-47; Intermedia Comments at 3-6 & App. A-B; TRA Comments at 25-29; KMC Comments at 10-13; Hyperion Comments at 5-9.

[18] In re BellSouth Telecommunications Inc. Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, Docket No. 7253-U (Georgia PSC Mar. 20, 1997); In re Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996, Alabama PSC Docket No. 25835 (October 16, 1997) ("Alabama PSC SGAT Order"); In re: Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, Florida PSC Order No. PSC-97-1459-FOF-TI (Nov. 19, 1997) ("Florida PSC Order").